

REMARKS

This Amendment is responsive to the Office Action mailed on June 25, 2008. Claims 1, 18, and 24 are amended. Claims 4, 19, and 23 are cancelled. Claims 25, 26 and 29-33 are withdrawn.

Applicants respectfully submit that upon the allowance of independent claim 1, withdrawn dependent claims 25, 26, and 29-33 should also be allowed.

Claims 1, 3, 5-18, 22 and 24-33 are pending.

Claims 1, 3-19 and 22-33 are rejected under 35 U.S.C. § 102(b) as being anticipated by Jameel (US 5,584,856).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

Discussion of Amended Claims

Claim 1 is amended herein to clarify that the tension band is an elastically bendable tension band (see, e.g., claim 4 and page 12, lines 24-25 of Applicants' specification).

Claim 1 is also amended to specify that each of said at least one tension band has a first free end and a second free end (see, e.g., page 17, line 6 of Applicants' specification, and Figures 4 and 5).

Claim 1 is further amended to specify that the first and second free ends are located above an outer surface of the outer abutment element (see, e.g., Applicants' Figures 4-6).

Claim 1 is further amended to clarify that there are one or more hook elements associated with each of the first and second free ends for fixing the at least one tension band relative to the outer abutment element (see, e.g., Applicants' specification, page 17, lines 13-16).

Claim 1 is also amended to specify that the one or more hook elements are formed on the outer abutment element (see, e.g., Claim 23 and Figures 4 and 5).

Claims 4, 19, and 23 are cancelled

Claim 18 is amended to conform to the changes made to claim 1.

Claim 24 is amended to depend from claim 1, rather than cancelled claim 23.

Discussion of Jameel

Claims 1, 3-19 and 22-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jameel. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Jameel does not meet the requirements for an anticipation rejection.

Jameel discloses a removable surgical staple 10 having a fastener member 11 and a retainer member 12. The retainer member 12 has an interior channel 31 having ridges 33 with serrated teeth 35. The fastener member 11 has a series of prongs 14 removably mounted to the head by a locking pin 15. The prongs 14 have two flexible arms 23 with serrated teeth 24 adapted to mate with the serrated teeth 35 of the retainer member 12 to lock the fastener member 11 to the retainer member 12 (Abstract, Col. 1, line 65 through Col. 2, line 19; Figures 1 and 2).

The Examiner apparently equates Applicants' claimed tension band with the prongs 14 of Jameel (Office Action, page 2). Claim 1 is amended herein to clarify that the at least one tension band is elastically bendable. While it is acknowledged that Jameel discloses that prongs 14 are bendable, there is no disclosure or suggestion that the prongs 14 are elastically bendable. Rather, the fastener member 11 and retainer member 12 (including prongs 14) are disclosed in Jameel as being made of metal or a resinous material. Those skilled in the art will appreciate that materials such as these commonly used to make medical staples are not elastically bendable.

Further, Jameel does not disclose or remotely suggest any hook elements having a hook tip that penetrates completely through the tension band, as claimed by Applicants. The Examiner points to reference numeral 28 of Jameel as comprising hooks (Office Action, page 3). However, reference numeral 28 of Jameel comprises serrated teeth of a locking pin 15 used to hold prongs 14 in the fastener member 11. Rather, in Jameel it is the serrated teeth 35 of the retainer member 12 that interlock with the serrated teeth 24 of the prongs 14 to hold retainer member 12 and fastener member 11 together. The teeth 35 of Jameel do not comprise hooks that penetrate

completely through prongs 14. Rather, the teeth 35 of Jameel interlock with corresponding teeth 24 on the prongs 14 and do not penetrate into or through any portion of the prongs 14.

Further, Jameel does not disclose or remotely suggest elastically bendable tension bands that have a first free end and a second free end, where the first and second free ends are located above an outer surface of the outer abutment element, as claimed by Applicants. In Jameel, the prongs 14 have at one end a head portion 21 which is secured to the fastener member 11 via the locking pin 15 and a piercing tip 21 at the other end (Col. 2, lines 2-11). Accordingly, the prongs 14 of Jameel have only one free end, tip 21. Further, the prongs 14 of Jameel are located below an inner surface of the fastener member 12 and no portion of the prongs 14 extends above an outer surface (tubular head 13) of the fastener member 11 (see, e.g., Figure 1 of Jameel).

In addition, Jameel does not disclose or remotely suggest one or more hook elements associated with each of the first and second free ends of the at least one tension band, as claimed by Applicants. As discussed above, the prongs 14 of Jameel have only one free end, and Jameel does not disclose any type of hook element that has a tip penetrating through an elastically bendable tension band.

Still further, Jameel does not disclose or remotely suggest that one or more hook elements are formed on the outer abutment element, as claimed by Applicants. As discussed above, Jameel does not disclose or suggest any hook element. Further, in Jameel, the serrated teeth 35, which interlock with serrated teeth 24 of the prongs 14 to secure the fastener member 11 and the retainer member 12 together, are located on the inside of the retainer member 12 (Figures 1 and 2).

Accordingly, Jameel does not disclose or remotely suggest that an at least one tension band is fixable relative to the outer abutment element by penetration of the one or more hook elements into the free ends of the at least one tension band such that, in a fixing position, a hook tip of each of the one or more hook elements penetrates completely through the at least one tension band, as claimed by Applicants.

As Jameel does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(b) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Jameel, taken alone or in combination with any of the other prior art of record.

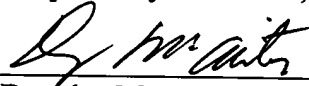
Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the amended claims and the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 102(b) is therefore respectfully requested.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



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